

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:08cv230**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
Vs.)	
)	MEMORANDUM AND RECOMMENDATION
3039.375 POUNDS OF COPPER COINS, <i>et al.</i>,)	
)	
Defendants.)	
)	

THIS MATTER is before the court on Zeke Layman's Motion to Dismiss (#46), filed April 27, 2009. Mr. Layman is not a party to this action and has been advised and cautioned on two previous occasions by court Order of the proper method for becoming a party and the consequences of repeated frivolous filings. Based on the undersigned's review of the pleadings of record and the instant motion, the undersigned will recommend that the Motion to Dismiss be summarily denied for lack of standing and that a system of pre-filing review be imposed upon Mr. Layman. In accordance with Rule 11, Federal Rules of Civil Procedure, the undersigned gives Mr. Layman both notice of the recommended action and an opportunity to respond to such recommendation through the Objection process outlined below.

A federal court has the power to issue pre-filing injunctions where vexatious conduct hinders the court from fulfilling its constitutional duty. Procup v. Strickland, 792 F.2d 1069, 1073 (11th Cir.1986) (*en banc*). Such enjoining of vexatious filings is appropriate so long as it does not completely foreclose access to the courts.

Graham v. Riddle, 554 F.2d 133, 135 (4th Cir.1977). In order to impose such a limitation, a litigant must be given notice and an opportunity to object prior to imposition of a system of pre-filing review, In re Oliver, 682 F.2d 443, 446 (3d Cir.1982), and the litigant must be notified of the consequences of failure to object to a magistrate judge's report. Wright v. Collins, 766 F.2d 841 (4th Cir.1985).

Mr. Layman is advised that the pre-filing review will prevent him from making in the future what the court has determined to be repeated frivolous filings despite being advised of the proper method for becoming a party to this action. The undersigned recommends that any letters, motions, or papers of any kind that he submits be first reviewed by a judge of the court for substantive review and that only with the approval of a judge of this court would such pleading then be filed. Failure to object within the time allowed below will result in the summary imposition of the proposed system of pre-filing review.

RECOMMENDATION

IT IS, THEREFORE, RESPECTFULLY RECOMMENDED that Zeke Layman's Motion to Dismiss (#46) be **DENIED** for lack of standing, and that a system of pre-filing review be imposed as to future submissions by Mr. Layman and that such paperwritings not be filed without approval of a judge of this court after substantive review.

The parties are hereby advised that, pursuant to 28, United States Code, Section

636(b)(1)(C), written objections to the findings of fact, conclusions of law, and recommendation contained herein must be filed within **ten (10)** days of service of same. Failure to file objections to this Memorandum and Recommendation with the district court will preclude the parties from raising such objections on appeal. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986); United States v. Schronce, 727 F.2d 91 (4th Cir.), cert. denied, 467 U.S. 1208 (1984).

Signed: April 28, 2009

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

